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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,637	02/12/2004	Osamu Kato	049400-5027	1776
9629 7590 10/10/2008 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
HALL, DEANNA K				
ART UNIT		PAPER NUMBER		
3767				
MAIL DATE		DELIVERY MODE		
10/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/776,637

Applicant(s)

KATO ET AL.

Examiner

DEANNA K. HALL

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 11, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 11, 13, 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgments

1. This office action is in response to the reply filed on June 20, 2008.
2. In the reply, the applicant amended claims 10-11 and added new claims 13-14. Claims 10, 11, 13 and 14 are pending in the application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clubb et al. (US 7,323,001) ("Clubb") in view of Shiber (US 5,653,696).**

Claim 10 is being construed as a product-by-process claim. Product-by-process claims are not limited to the manipulations of the recited steps, only to the product implied by the steps. See MPEP 2113. Further, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). See also MPEP 2114.

Clubb discloses a flexible hollow tube body 50 formed by a plurality of austenitic stainless steel wires 56 tightly stranded cylindrically around an elongate core 54 into a wire-rope configuration, see Figs. 5A, 5B; C9 L62-C10 L20; one end of the wires 56 being capable of being attached to a twisting device and a second end being capable of being secured to a weight, the wires are capable of having resisting electric current causing the wires to heat and thereafter being drawn from the elongate core C9 L62-C10 L10. Helical grooves in an inner surface of the tube body formed by the stranded steel wires helically and tightly stranded abutting each other are capable of carrying away hard clot powder, see Fig. 5B.

Clubb discloses the invention as substantially claimed; however, Clubb does not directly disclose a knife-edge circle front welded to a leading end of the flexible hollow tube body as a blade edge which diametrically decreases progressively as approaching forward. Shiber, in the analogous art, teaches a flexible tube with a knife-edge circle front 22, 102, Figs. 6, 24 welded 103 on and an outwardly arcuated blade edge which diametrically decreases progressively as approaching outward, Figs. 6, 24-27. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Clubb with the knife-edge circle front as taught by Shiber for breaking up the clot material.

5. Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clubb in view of Shiber further in view of Fleischhacker et al. (US 5,373,619) ("Fleischhacker").

Clubb/Shiber discloses the invention as substantially claimed (see above). However, this combination fails to directly disclose the flexible hollow tube having a plurality of zones. Fleischhacker, in the analogous art, teaches a flexible hollow tube having a plurality of zones comprising a rigid-flexible gradient structure C17 L7-12. It is inherent that some sort of clamp must be used in Fleischhacker to obtain variations in torsional rigidity by changing the pitch or density of the helical winding of the wire. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Clubb/Shiber with the plurality of zones as taught by Fleischhacker for increasing the maneuverability and control of the flexible hollow tube.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEANNA K. HALL whose telephone number is (571)272-2819. The examiner can normally be reached on M-F 9:00am-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3767

/Deanna K. Hall/

Examiner, Art Unit 3767

/Kevin C. Simons/

Supervisory Patent Examiner, Art Unit 3767